

WISCONSIN WILDERNESS ACT OF 1984

APRIL 26 (legislative day, APRIL 24), 1984.—Ordered to be printed

Mr. HELMS, from the Committee on Agriculture, Nutrition, and Forestry, submitted the following

REPORT

[To accompany H.R. 3578]

The Committee on Agriculture, Nutrition, and Forestry, to which was referred the bill (H.R. 3578) to establish the wilderness areas in Wisconsin, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill (as amended) do pass.

SHORT EXPLANATION

The bill, as reported by the Committee, would designate 2 areas (totaling approximately 24,339 acres) in the national forests in the State of Wisconsin as wilderness areas and as components of the National Wilderness Preservation System. The bill provides for the Secretary of Agriculture to administer the areas designated as wilderness by the bill in accordance with the provisions of the Wilderness Act, to promptly file maps and legal descriptions of the designated areas with appropriate committees of Congress, and to make the maps and descriptions available for public inspection.

Further, the bill contains language to ensure that National Forest System lands in the State of Wisconsin that were studied in the Department of Agriculture's second Roadless Area Review and Evaluation and not designated as wilderness by the bill are released for such nonwilderness uses as are deemed appropriate through the national forest management planning process. The bill also prohibits, unless expressly authorized by Congress, any further statewide roadless area review and evaluation of National Forest System lands in Wisconsin for purposes of considering the wilderness suitability of such lands.

COMMITTEE AMENDMENT

The Committee amendment to the text of the bill strikes all after the enacting clause and inserts in lieu thereof an amendment in the nature of a substitute that is technical in nature, making clarifying and other clerical changes.

The Committee amendment to the title of the bill is clerical in nature.

PURPOSE AND NEED FOR LEGISLATION

H.R. 3578 has as its purpose the establishment of two new wilderness areas on National Forest System lands in Wisconsin as components of the National Wilderness Preservation System. The two areas are roadless, or undeveloped, areas that were evaluated in the second Roadless Area Review and Evaluation (RARE II) conducted by the Department of Agriculture during the period 1977 through 1979. That study examined the roadless areas of the National Forest System nationwide and, through the final environmental impact statement issued by the Department of Agriculture in January 1979, recommended that certain of these lands, including the two areas in Wisconsin, be designated as wilderness.

WILDERNESS DESIGNATIONS

The 2 areas to be designated as wilderness total 24,339 acres. The Porcupine Lake area, located in the Chequamegon National Forest, consists of a single unit of 4,235 acres. Several small and attractive lakes and other unique topographic features, as well as portions of a national scenic trail, are found in this area. The Headwaters Wilderness area is located on the Nicolet National Forest and consists of 3 separate units—Kimball Creek, Headwaters of the Pine, and Shelp Lake—totaling 20,104 acres. The areas are separated by public roads and will be managed as separate units. The roads will remain open for public use. These areas contain vegetative and topographic features representative of the highlands of northern Wisconsin as well as the headwaters of a State-designated wild river. These areas would be managed by the Forest Service as units of the National Wilderness Preservation System under the provisions of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1131-1136). All of the areas to be designated were recommended for wilderness in the RARE II study.

A description of the wilderness proposals of H.R. 3578 follows:

Porcupine Lake Wilderness

This 4,235-acre proposed wilderness is located in the Chequamegon (pronounced She-wa-me-gon) National Forest in the northern tip of Wisconsin some 40 miles south of Lake Superior. The area includes the 2-mile-long Porcupine Lake and numerous other lakes and ponds, and is popular for canoeing, fishing, and other forms of primitive recreation. A section of the North Country Trail traverses virtually the length of the area.

The topography of the proposal is characterized by rolling hills to the west and relatively flat uplands and swamps to the east.

Mature stands of aspen, northern red oak, and hemlock contribute to the area's wild character.

It is the Committee's intent that two significant areas in the Chequamegon National Forest that were not designated as wilderness should receive special management consideration. Those 2 areas are a tract of 900 acres known as St. Peters Dome/Morgan Falls and a 60-acre tract known as the Old Growth Stand in the Round Lake Area.

The Committee suggests that the Forest service continue to provide for multiple-use management of these areas in a manner that does not disrupt the natural resources of the areas. Naturally existing plant and animal communities should be allowed to regenerate undisturbed.

The Committee notes that mechanized vehicles are used in or immediately adjacent to these areas. In the management of these areas, the Forest Service should not allow the use of motorized vehicles where that use is not already established and should not provide additional facilities for mechanized transport.

Kimball Creek/Headwaters of the Pine-Shelp Lake

These 3 adjacent roadless areas from the Headwaters Wilderness, a total wilderness resource exceeding 20,000 acres which is broken only by 2 unpaved forest roads which traverse the area. Located in the Nicolet National Forest in north central Wisconsin, the terrain is generally flat with hardwood ridges and forested swamp, muskeg, and bog lowlands. Kimball Creek, Shelp Lake, and the Pine River are the major bodies of water within the proposals, with the Pine River having been designated a wild river by the Wisconsin legislature.

The combined wilderness resources provide excellent opportunities for trout fishing, hiking, cross-country skiing, and other forms of primitive recreation. The endangered bald eagle inhabits portions of the area. Several stands of old growth pine enhance the wilderness environment and provide opportunities for scientific study. A portion of the Shelp Lake proposal has been classified as a scientific area by the State of Wisconsin in order to protect a special bog environment.

H.R. 3578 divides the area into the three separate wilderness proposals, thereby allowing for continued use of the forest roads which traverse the area.

SUFFICIENCY AND RELEASE LANGUAGE

Background

In 1924, when the U.S. Forest Service decided it should manage wilderness as one of the many uses to be made of the National Forest System, it established the Gila Wilderness in the Gila National Forest in New Mexico. The purpose was to keep some parts of the Nation's forests in the condition in which mankind had found them, both as scientific benchmarks against which civilization's works could be compared and as recreational refuges for people who wanted to temporarily get away from the stresses of civilization. During the next 40 years, the Forest Service administratively established more of these areas, mostly in the West, from

which evidence of human technology and development are substantially forbidden.

In 1964, this wilderness concept became national policy when Congress passed the Wilderness Act and established the National Wilderness Preservation System. That System incorporated the 9.1 million acres that had been set aside by the Forest Service over the previous 4 decades. Generally, the Wilderness Act specifies that within wilderness areas there will be no roads, no timber harvesting, no structures or installations, and no use of motor boats or landing of aircraft. Each wilderness area was to be an area where man was a visitor who did not remain.

The Wilderness Act gave the Forest Service 10 years to complete studies of the national forest primitive areas—areas temporarily reserved from access pending study of their suitability for wilderness designation. In addition, Congress provided that no future wilderness could be created in the national forests, except by Act of Congress. However, Congress did not preclude the management of lands within the National Forest System for primitive, roadless recreation, within the concept of multiple-use management.

As the Forest Service began its review of primitive areas within the national forests in the late 1960's to determine the suitability for wilderness designation of specific tracts, a number of problems arose in connection with established timber management plans. In many forests, after new sales were advertised, administrative protests were filed, charging that a particular sale would violate the statutory concept of multiple-use. Usually, the allegation was that the proposed sale was in an area that should be designated as wilderness or that should be devoted to unstructured recreation with no harvesting of timber. As timber sales became "tied up" in such appeals and the orderly management of the national forests disintegrated, the Forest Service instituted the first Roadless Area Review and Evaluation (RARE I) as the planning process to resolve the problems.

By 1973, RARE I had resulted in the selection of 274 wilderness study areas containing approximately 12.3 million acres. The other roadless areas in the RARE I inventory, having been considered and rejected for possible wilderness designation, were not protected as wilderness and remained in their full multiple-use status.

The National Environmental Policy Act (NEPA) became law on January 1, 1970. It required the Executive Branch, before making any major decision having a significant impact on the human environment, to prepare an assessment of the environmental impact of the proposed action. The NEPA was the basis of a lawsuit filed in 1972, as the RARE I process was nearing completion, that charged that the Forest Service must prepare environmental impact statements on roadless areas that were supposedly returned to multiple-use management. The Federal District Court for the Northern District of California agreed that the agency was subject to the decisionmaking process prescribed by NEPA, and all development activities on the roadless areas were stopped. See *Sierra Club v. Butz*, Civ. No. 72-1445-SC (N.D. Cal. 1972); 3 Environmental Law Reporter 20071.

As a result of restricted sources of timber supplies, tremendous pressures were placed on the remaining national forest lands that

remained open to timber harvesting. In some forests, timber sale levels dropped dramatically below the allowable cuts. In other forests, timber sale levels were maintained, but sales were concentrated on lands outside the RARE I roadless areas. In these forests, the concentration of sales at the full sales volume on a limited area produced fears that these available areas would be overcut to the detriment of land and watersheds.

It was obvious that a remedy was needed for this situation, and the Forest Service decided that a faster planning process was the answer. Thus, the second Roadless Area Review and Evaluation (RARE II) was formulated to expedite the planning process for roadless areas. RARE II began in June 1977 and was intended to survey the roadless and undeveloped areas within the National Forest System and to distinguish areas suitable for wilderness designation from those most appropriate for other uses. The areas found suitable for wilderness would be recommended for addition to the National Wilderness Preservation System through congressional action. The remaining roadless lands would be allocated to nonwilderness for uses determined under the multiple-use planning process, or allocated to further study.

On April 16, 1979, President Carter made final recommendations to Congress based on the review of 2,919 identified roadless areas encompassing 62-million acres in the national forests and national grasslands. The Administration recommended that wilderness designation be given to approximately 15.1 million acres of the original 62-million acre roadless inventory. Another 10.8 million acres of roadless lands were determined to require further planning before decisions were made on their future management. The balance of the areas, which totaled about 36 million acres, were allotted to nonwilderness, multiple-use management.

Much litigation has occurred since the RARE II recommendations. This has had a direct bearing on congressional consideration of wilderness legislation. In June 1979, the State of California challenged the RARE II wilderness and nonwilderness allocations on National Forest System lands in that State. *California v. Bergland*, 483 F. Supp 465 (E.D. Cal. 1980). The State and various environmental organizations which joined the lawsuit claimed that RARE II was legally flawed. On January 8, 1980, the Federal district court agreed with the State's position, finding that the environmental statement for RARE II was deficient under the provisions of the National Environmental Policy Act. The Court ruled that a more site-specific analysis of wilderness qualities was required for 46 of the areas allocated for nonwilderness. Additionally, the Court found flaws in the RARE II analysis process. As a result, the Court enjoined any development in the 46 disputed areas, pending preparation of an adequate environmental impact statement. The major points of the district court ruling were affirmed by the Ninth Circuit Court of Appeals. *California v. Block*, 690 F. 2d 753 (9th Cir. 1982).

The ruling by the Court of Appeals that the RARE II environmental impact statement was deficient had a significant impact on Forest Service activities. Although the decision applied specifically only to the 46 roadless areas in California, it was binding on other Federal district courts in the Ninth Circuit (comprising the States

of California, Oregon, Washington, Idaho, Montana, Nevada, Arizona, Alaska, and Hawaii) and could be cited in States outside the Ninth Circuit's jurisdiction. The reasoning of the decision produces uncertainty regarding the RARE II study for other States. Management of roadless areas not designated as wilderness is subject to challenge through appeals and lawsuits. In fact, such challenges have occurred. There have been three lawsuits filed in the Northwest that rely extensively on *California v. Block*. In *Earth First v. Block* (Civil No. 83-6298-ME-RE, D. Ore.), the United States District Court for the District of Oregon enjoined the Forest Service from taking or permitting any action which would be inconsistent with the wilderness character of a roadless area in Oregon until the requirements of *California v. Block* and the NEPA have been met. Similarly, in *Kettle Range Conservation Group v. Block* (Civil No. C-83-590-JLQ, E.D. Wash.), the Forest Service was enjoined from taking or permitting any action which will change the wilderness characteristics of four roadless areas in Washington. In December 1983, the Oregon Natural Resources Council brought suit against the Forest Service in an attempt to enjoin any activity which would impair the wilderness characteristics of approximately 2.25 million acres of roadless lands in Oregon until the requirements of NEPA have been met. That suit is pending. *Oregon Natural Resources Council v. Block*, Civil No. 83-1902, D. Ore.

In February 1983, Assistant Secretary of Agriculture John B. Crowell, Jr., announced that all roadless areas studied for wilderness potential during RARE II would be subject to reevaluation. This reevaluation was to be done as a part of the national forest land management planning process then underway for 120 national forest planning units and scheduled for completion in 1985.

The desire to avoid further wilderness study and to preclude litigation directed at stopping the continuation of management activities on roadless areas led to a search for a legislative solution. Provisions appearing in this bill and termed "sufficiency" and "release" language are the outcome of that search. The language has appeared in legislation designating wilderness areas in Colorado, New Mexico, Alaska, Missouri, West Virginia, and Indiana.

The status of national forest areas designated for further planning by RARE II and lying east of the 100th meridian was also placed in doubt by a case originating in North Carolina. The Eastern Wilderness Act (88 Stat. 2096; 16 U.S.C. 1132 note) designated certain national forest lands as wilderness and designated other lands as wilderness study areas. That Act directed the Secretary of Agriculture to review the study areas for their suitability or non-suitability for wilderness designation and to make recommendations to the President, including recommendations for wilderness study areas. In *Southern Appalachian Multiple Use Council v. Bergland*, (No. A-C-80-1, W.D. N.C.), a Federal district court concluded and found, in relying on the Eastern Wilderness Act, that the Secretary had no authority to administratively designate "further planning" areas (and thereby administratively withhold any management activities in the area pending the completion of the study and determination of the area's status), but only to *recommend* areas to be designated as wilderness study areas. The court also found that the Secretary could manage the areas recommend-

ed so as not to impair their suitability for wilderness, pending congressional action. The decision has had an effect on the land management planning process on eastern national forests (those affected by the provisions of the Eastern Wilderness Act) insofar as the evaluation of areas for wilderness suitability. Under the court's decision, forest plans on national forests east of the 100th meridian cannot recommend areas for wilderness designation; rather they can only recommend to Congress that such areas be studied for their wilderness suitability.

Sufficiency and judicial review of the RARE II environmental statement

The bill contains language relating to the sufficiency of the RARE II final environmental impact statement. As previously discussed, the need for the language arises because of a Federal district court decision in *California v. Bergland*, supra, in which it was held that the RARE II environmental impact statement, as it applied to 46 areas considered for wilderness in California, had insufficiently considered the wilderness alternative for the areas. Activities that would impair the wilderness characteristics of the areas were enjoined until subsequent reconsideration of wilderness was completed. This action creates uncertainty over the management of some nonwilderness areas, where administrative or judicial appeals could halt some activities until adequate environmental impact statements are prepared. The Committee, in considering the bill, has reviewed the roadless areas in Wisconsin. It believes that the RARE II final environmental impact statement, insofar as National Forest System lands in Wisconsin are concerned, is sufficient, and, therefore, the bill provides that such environmental statement shall not be subject to judicial review.

Release, management, and future wilderness consideration of non-wilderness areas

The RARE II process during 1977 through 1979 took place concurrently with the development by the Forest Service of a new land management planning process mandated by the National Forest Management Act of 1976 (NFMA). That process requires the national forest land management plans to be reviewed and revised periodically to provide for a variety of uses on the land. During the review and revision process the Forest Service is required to study a broad range of potential uses and options for each national forest. NFMA provides that the option of recommending land to Congress for inclusion in the National Wilderness Preservation System is only one of the many options that must be considered during the planning process for those lands which may be suited for wilderness designation. The Forest Service is presently developing the initial, or "first generation," plan for each national forest. These are the so-called "section 6" plans, and they are scheduled for completion by September 30, 1985. Upon implementation, these plans will be in effect for 10 to 15 years before being revised and updated.

One of the goals of RARE II was to consider the wilderness potential of National Forest System roadless areas. The Committee believes that further consideration of the wilderness option during development of the initial plans for the National Forest System

roadless areas in Wisconsin and during the period when the initial plan is in effect would be duplicative of studies and reviews that have already been made by both the Forest Service and Congress. Therefore, the bill provides that the RARE II evaluation constitutes and adequate consideration of the suitability of these roadless areas for inclusion in the National Wilderness Preservation System and no further review by the Department of Agriculture shall be required prior to the revision of the initial land management plan for the national forest. This provision is necessary to ensure that these lands will be considered as functioning units of the national forests and has the practical effect of releasing these lands for multiple uses other than wilderness.

The NFMA provides that a national forest management plan shall be in effect for no longer than 15 years before it is revised. The Forest Service regulations, however, provide that a forest plan "shall ordinarily be revised on a 10-year cycle or at least every 15 years." (36 CFR 219.10(g)).

By tying future review of the wilderness option to revision of initial plans, the Committee intends to make it clear, consistent with the NFMA and the Forest Service regulations, that amendments to a plan, including those that might result in a significant change in a plan, would not trigger the need for reconsideration of the wilderness option. The wilderness option does not need to be reconsidered until the Forest Service determines (1) based on a review of the lands covered by a plan, that conditions in the area covered by a plan have changed so significantly that the entire plan needs to be completely revised, or (2) that the statutory 15-year maximum life span of the plan is expiring.

A revision of a forest plan is a costly undertaking in terms of dollars and manpower and the Committee does not expect such an effort to be undertaken lightly. When required by changing conditions, the Forest Service should make every effort to address local changes in land management plans through the amendment process, reserving the revision option only for major, forest-wide changes in conditions.

For example, if a new powerline is proposed to be built across a forest, any modification of the applicable forest plan to permit the line to be built would be accomplished by an amendment, not a revision, and therefore the wilderness option would not have to be re-examined. It is only when a proposed change in management would significantly affect overall goals or uses for the entire forest that a revision would be made. An example of such a situation is the recent eruption of Mt. St. Helens. Because it affected so much of the land in the Gifford Pinchot National Forest, including the forest's overall timber harvest schedule, the necessary changes in the applicable forest plan would likely be considered a revision of the plan. In this regard, the Committee notes that in the vast majority of cases the 10- to 15-year planning cycle established by the NFMA and in the existing regulations is short enough to accommodate most changes in circumstances without triggering more frequent plan "revisions". It is highly unlikely that conditions will change so dramatically during the 10- to 15-year planning cycle that anything more comprehensive than a plan amendment would be required.

It is not likely that primitive, semiprimitive, or motorized recreation use would change so rapidly over an entire national forest that the Forest Service or the Federal courts would be justified in concluding that the conditions in the forest are so significantly changed as to justify making a plan revision prior to the normal 10- to 15-year life span for the existing plan. For example, recreation use might increase in a specific area or areas resulting in changed conditions in the forest itself. In the judgment of the Forest Service, such changes could be met by amending the plan, as opposed to revising it. This is not to say that an increase in "demand" for recreation in a given area will automatically, in-and-of-itself, constitute a valid requirement for even a plan amendment. In addition, it is not the Committee's intent, nor, in the judgment of the Committee, the intent of any Federal statute, to "force" the Forest Service into either plan amendments or revisions as a result of changes in use patterns in the national forests.

The Chief of the Forest Service has indicated that, in his view, most plans will be in existence for 10 years before they are revised. The Committee shares this view and anticipates that plans will not be revised in advance of their anticipated maximum life span absent extraordinary circumstances. The Committee understands and expects that with the first generation plans to be completed by late 1985 in most cases, the time of revision for most plans will begin about 10 years from the date of implementation for each plan. Accordingly, the Committee expects that the wilderness option for any area will not be reexamined again until the plans have been in effect for 10 years, unless the area is specifically designated as a wilderness study area by Congress.

The Committee notes that administrative or judicial appeals may mean that some of the first generation plans will not actually be implemented until the late 1980's, in which case plan revisions would not take place until a 10-year period has elapsed from the date each plan is implemented. If the full 15 years allowed by NFMA elapses before a revision is made, the wilderness option may not in some cases be reviewed until the year 2000 or later.

The initial land management plans for the Nicolet and Chequamegon National Forests are scheduled for completion in 1985. It is the understanding of the parties who negotiated the compromise that led to this legislation and the Wisconsin congressional delegation that the wilderness potential of roadless areas in Wisconsin not designated as wilderness by this legislation will not be studied again until the second generation planning cycle. The Committee agrees that this understanding should be carried out.

The question has also arisen as to whether a revision would be triggered if the Forest Service is directed by the courts to modify or rework an initial plan, or if the Forest Service withdraws an initial plan to correct technical errors or to address issues raised by an administrative appeal. The Committee wants to make it as clear as possible that any reworking of an initial plan for such reasons would not constitute a revision of the plan and would not require the reconsideration of the wilderness option for the lands covered by the plan.

This position is based on the fact that court-ordered or administrative reworkings or modifications of a plan would most likely

come about to resolve inadequacies in the preparation of the plan under the requirements of NFMA and other applicable laws. Since the NFMA, and the implementing regulations, specify that a plan revision will only occur when the Secretary finds that there has been a significant change in conditions in the forest planning unit, or at least once every 10 to 15 years, is clear that such reworking or modification would not be a revision for at least two reasons: (1) the modification would not be the result of any significant change in conditions in the forest planning unit and (2) a plan must be properly prepared and implemented before it can be revised.

The fact that wilderness option for roadless areas will be considered in the future during the planning process raises the hypothetical argument that areas not designated for wilderness must be managed to preserve their wilderness attributes so that they may be considered for such designation in the future. This interpretation, if accepted as correct, would result in all roadless areas being kept in "de facto" wilderness status indefinitely. Such a requirement would be detrimental to the orderly management of nonwilderness lands and the goals of the Forest and Rangeland Renewable Resources Planning Act of 1974.

To eliminate any possible misunderstanding on this point, the bill provides that areas not designated as wilderness shall be managed for multiple uses pursuant to section 6 of the Forest and Rangeland Renewable Planning Act of 1974.

The Forest Service already has statutory authority to manage roadless areas for multiple uses other than wilderness. The Committee wishes to make clear, however, that study of the wilderness option in future generations of section 6 plans is required only for those lands that may be suited for wilderness designation at the time of the development of such future plans. During the lifetime of each generation of plans, then, the forest land and other resources can, in fact, be put to the uses that are authorized in the plan. In short, one plan will remain in effect until the second plan is implemented, and the forest will be managed in accordance with the plan that is in effect, even if such management may result in the land no longer being suited for wilderness.

Thus, it is likely that areas evaluated for wilderness suitability in one generation of plans may not physically qualify for wilderness consideration by the time the next generation of plans is prepared. For example, the Committee notes that many areas that were studied for wilderness in the RARE II, recommended for nonwilderness, and released administratively in April of 1979, may no longer qualify as suitable wilderness study areas as a result of approved multiple-use activities having been carried out.

Under this provision, it is the Committee's intent and understanding that the Forest Service may conduct a timber sale in a roadless area being managed for multiple-use purposes other than wilderness and not be challenged on the basis that the area will be spoiled for consideration as wilderness in a future planning cycle. Once into a second-generation plan, the Forest Service may, of course, manage a roadless area according to that plan without the necessity of preserving the wilderness option for the third-generation planning process. Should the particular area still qualify for possible wilderness designation at the time of the third-generation

planning process, which is likely in many cases, the wilderness option for the area would be considered at that time under the requirements of NFMA. In short, the wilderness option must be considered in each future planning generation for all of the areas in each planning unit that still possess the required wilderness attributes. There is no requirement, however, that these attributes be preserved for the purpose of maintaining the suitability of the affected areas for future evaluation as wilderness in the planning process.

In the Committee's judgment, the Forest Service is not required to manage multiple-use lands in a "de facto" wilderness manner. Of course, the Forest Service can, if it determines such action appropriate, manage lands to preserve their natural undeveloped characteristics if the applicable plan calls for such management. Likewise, the Forest Service can, if through the land management planning process it determines such action appropriate, provide for other multiple uses on lands that have not been designated as wilderness or as wilderness study areas by Congress. The Forest Service should be able to manage all nonwilderness lands in the manner determined appropriate through the land management planning process.

In arriving at this position, the Committee has carefully considered and balanced the wishes and concerns of many varied interest groups involved in this issue, and wishes to emphasize the vital importance of completing and implementing the forest plans in Wisconsin and ending the state of uncertainty over appropriate land management that now exists in the national forests.

No further statewide wilderness review

With regard to the possibility of the Forest Service undertaking future administrative reviews similar to RARE I and RARE II, since the National Forest Management Act of 1976 planning process is now in place, the Committee wishes to see the development of any future wilderness recommendations by the Forest Service take place only through that planning process, unless Congress expressly asks for additional evaluations through authorizing legislation. Therefore, H.R. 3578 prohibits the Department of Agriculture from conducting any further statewide roadless area review and evaluation of National Forest System lands in Wisconsin for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System. The Committee does not intend that this provision prohibit the Forest Service from considering the wilderness option during a normal plan revision, should the entire State be covered by a single plan.

COMMITTEE CONSIDERATION

HEARINGS

On Wednesday, November 16, 1983, the Subcommittee on Soil and Water Conservation, Forestry, and Environment, chaired by Senator Roger Jepsen, held a hearing on S. 1610, the companion measure to H.R. 3578.

Senator Robert Kasten, sponsor, and Senator William Proxmire, co-sponsor of S. 1610, both testified in favor of the legislation, noting that it was the result of compromise among various Wisconsin interests, and has strong support in Wisconsin.

J. Lamar Beasley, Deputy Chief for Programs and Legislation, U.S. Forest Service, testified for the Department of Agriculture. He said the Department supports the designation of the areas recommended in section 1, but recommended stronger release language to provide more long-term stability to the National Forest System lands not designated as wilderness by this bill or currently in the National Wilderness Preservation System.

Next to testify was a panel consisting of Thomas H. Schmidt, Executive Director, Wisconsin Paper Council; William Schultheis, Former Chapter Chairman, John Muir Chapter, Sierra Club; and Daniel P. Meyer, Director of Public Affairs, Consolidated Papers, Inc.

Mr. Schmidt said his organization reluctantly supports the legislation as long as the following three recommendations are included in the report: (1) that further wilderness review, unless specifically authorized by Congress, will not be undertaken in Wisconsin until the year 2000; (2) that the Forest Service be directed to take appropriate measures to increase productivity on lands not included in the wilderness program; and (3) that the Forest Service give special management consideration to the Saint Peter's Dome-Morgan Falls area and to the virgin white pine stand near Round Lake.

Mr. Meyer also qualified his organization's support of the bill, saying that a prime benefit of the bill would be to return the non-designated lands to multiple use. He said it was his understanding that the report would indicate the Congress's intent that the release lands not be studied for wilderness until the year 2000. Mr. Schultheis said the Sierra Club of Wisconsin is in favor of the bill. He pointed out, however, that it is a compromise and the compromise is based on the inclusion of standard Colorado sufficiency-release language.

COMMITTEE MARKUP

The Committee met in open session on Wednesday, March 28, 1984, and considered legislation to designate certain areas in the National Forest System in the States of North Carolina, Vermont, New Hampshire, and Wisconsin as wilderness areas, wilderness study areas, or national recreation areas.

In his opening statement, Chairman Helms noted that he had previously chaired a hearing on the North Carolina wilderness bill and that there was, as far as he was aware, agreement among interested parties regarding the area to be designated as wilderness in that bill and in the other bills. However, the Chairman went on to point out that concerns had been raised over the release language included in the bills because it was viewed by many as not being specific enough in establishing the timing of any further wilderness review in the future.

The Chairman emphasized his desire to get the legislation passed, but cautioned that the release language issue is a matter

that involves national forest policy and that goes beyond the interests of individual States.

After expressing his appreciation for Senator Jepsen's help and cooperation in holding hearings on the wilderness bills, Senator Leahy described the development of the wilderness bill for Vermont, emphasizing that the designation of wilderness areas is not national precedent-setting legislation but is instead a State matter that affects principally the residents of the State that is involved. He noted that there has been some question raised regarding the release language, but stated that the language included in the bills had been agreed to during the course of their long development process and urged the Committee to agree to that language.

Senator Jepsen observed that the wilderness bills have an unusual amount of local application. Noting that some disagreement on the release language had arisen, he pointed out that the bills had been developed with the cooperation of a great number of people, including the Forest Service. Senator Jepsen expressed his hope that the Committee would promptly report the bills to the Senate.

Senator Melcher began his remarks by reviewing the history and development of the Eastern Wilderness Act in the early 1970's. He noted that one of the most significant decisions made during that process was to include the eastern wilderness areas under the same laws as govern wilderness areas in the rest of the country—predominantly in the west. He further noted that the national forests were by design, incorporated into a single National Forest System.

Senator Melcher next pointed out that the release language in the bills being considered by the Committee—the so-called Colorado language—was consistent with most of the wilderness bills that had been previously enacted. However, since that language was first developed, the Forest Service has begun to recognize that it has certain problems. In particular, he pointed out that the language had originally been viewed as being consistent with the principles set forth in the National Forest Management Act of 1976—that wilderness is one of the multiple uses and therefore the wilderness values of national forest lands would have to be reconsidered as part of the planning process during each of the 10- to 15-year forest planning cycles. The problem with the language, Senator Melcher explained, is that it is not specific enough on its face to ensure the stability in the management process envisioned in the 1976 Act, and that this ambiguity can only be clarified by referring to the Committee report language that accompanied the bills when they were developed in Congress. Stating that the courts will not always look beyond the clear wording of a statute to determine the intent of Congress as expressed in Committee reports, Senator Melcher urged that the language in the bills be modified to make certain the agreed-on purpose of the release language is clear in the bills themselves—that is, that the wilderness option would be reviewed during the 10- to 15-year forest planning cycles, but not more frequently.

After an explanation of the bills, the Chief of the Forest Service, Mr. Max Peterson, was asked by the Chairman to state the Department's position on the bills pending before the Committee. Mr. Peterson began by noting that he participated in the drafting of the original Colorado release language in 1979 and, thus, was able to

present the Department's current position with the benefit of 5 years of hindsight. He then explained that the release language included in the bills would result in four particular problems arising. First, as to the Vermont and New Hampshire bills, the prohibition against any further statewide roadless area review by the Forest Service would be in direct conflict with the requirements of the National Forest Management Act of 1976 that a land management plan, required to be developed at least once every 10 to 15 years, for the national forests in those States be prepared for an entire forest and include a review of the wilderness option. This conflict would result from the fact that there is only one national forest in each of those States, and, thus, the development of the required land management plan would necessarily involve the consideration of the wilderness option in connection with the entire forest in those particular States.

Second, as to the New Hampshire bill, Mr. Peterson pointed out that the release language only applies to lands that were included in the RARE II final environmental statement, but that in New Hampshire several roadless areas were excluded from RARE II. As a result, unless the release language was changed, the wilderness option for these areas would have to be reviewed in connection with the development of the initial plan.

In response to a question by Senator Leahy, Mr. Peterson indicated that the problems he had identified were technical in nature and could easily be corrected by the Committee.

The third point raised by Mr. Peterson concerned the duration of the release from wilderness review. He noted that the Department was not certain that a court, in deciding the matter in connection with a lawsuit, would in fact rely on the report language and interpret the bill to allow wilderness review only as a part of the 10- to 15-year planning cycle. This problem, he noted, could be eliminated by making it clear in the bills themselves that the release is for a 10- to 15-year period.

Fourth, Mr. Peterson stated that the release language was not clear as to how long the Forest Service would be released from managing as wilderness the areas that were not designated as wilderness in the bills but that might be suitable for wilderness designation at some future time.

In the discussion that followed, Mr. Peterson responded to a question about what constitutes a revision of a plan by citing a case in New Mexico where a plan was only in effect for 90 days when it was discovered to be based on erroneous information regarding timber use. The plan was withdrawn and is being redone. He noted that in that case the change to the plan would be very significant, so that it was unclear whether it involved a revision or not. Senator Melcher then noted that the Colorado release language was included in the New Mexico bill and, thus, it is possible that case could lead to a court challenge and resulting delay in implementing the new plan if the Forest Service does not review the wilderness option again.

Senator Hatch then noted that the wilderness situation varied greatly among States—particularly between Eastern States and some Western States—and that as a result he was concerned that the resolution of the release language in the pending bills not be

viewed as setting a national precedent. Some discussion of this point followed during which Senator Leahy expressed his agreement with the position taken by Senator Hatch.

Senator Melcher again stated that, regardless of the desire to let individual States have their option on the matter of wilderness, it must be recognized that the bills really are national in scope. He noted that, since there is no disagreement over what the Colorado language should mean, the language of the bills should be clarified to unequivocally state that meaning.

After a brief discussion, Senator Jepsen moved that the Committee report the Wisconsin wilderness bill. By voice vote, the Committee agreed to report H.R. 3578 to the Senate with the recommendation that it pass.

SECTION-BY-SECTION ANALYSIS

SHORT TITLE

Section 1 provides that the bill may be cited as the "Wisconsin Wilderness Act of 1984".

DESIGNATION OF WILDERNESS AREAS

Section 2 designates certain National Forest System lands in Wisconsin, totaling approximately 24,339 acres, as wilderness areas and as components of the National Wilderness Preservation System as follows:

(1) approximately 4,235 acres in the Chequamegon National Forest, which are generally depicted on a map entitled "Porcupine Lake", dated November 1983; and

(2) certain lands in the Nicolet National Forest, generally known as the "Headwaters Wilderness", consisting of the following parcels—

(a) approximately 7,527 acres, known as "Kimball Creek",

(b) approximately 8,872 acres, known as "Headwaters of the Pine", and

(c) approximately 3,705 acres, known as "Shelp Lake".

MAPS AND DESCRIPTIONS

Section 3 provides that, as soon as practicable after enactment of the bill, the Secretary of Agriculture is required to file maps and legal descriptions of the areas designated as wilderness in the bill with the House Committees on Agriculture and on Interior and Insular Affairs and with the Senate Committee on Agriculture, Nutrition, and Forestry. In addition, this section provides that the maps and descriptions shall have the same force and effect as if included in the bill, except that correction of clerical and typographical errors may be made by the Secretary. The maps and descriptions must be on file and available for public inspection in the Office of the Chief of the Forest Service.

ADMINISTRATION OF WILDERNESS

Section 4 requires that, subject to valid existing rights, each of the areas designated as wilderness by the bill be administered by the Secretary in accordance with the provisions of the Wilderness Act, except that any reference in those provisions to the effective date of that Act would be deemed to be a reference to the date of enactment of the bill.

EFFECT OF RARE II

Section 5(a) contains congressional findings to the effect that the Department of Agriculture has completed the second Roadless Area Review and Evaluation (RARE II) and that Congress has made its own evaluation of National Forest System roadless areas in Wisconsin, including reviewing the environmental impacts associated with alternative uses of these areas.

Section 5(b) provides that Congress determines and directs, with respect to the National Forest System lands in Wisconsin, that—

- (1) without passing on the question of the legal sufficiency of the RARE II final environmental statement (dated January 1979) with respect to National Forest System lands in States other than Wisconsin, such final environmental statement shall not be subject to judicial review;

- (2) to the extent such lands were reviewed in the RARE II, that review and evaluation shall be considered to be an adequate consideration of the suitability of such lands for inclusion in the National Wilderness Preservation System for the purposes of the initial land management plans required by law. Also, the Department shall not be required to review the wilderness option for such lands prior to revision of the initial land management plans and in no case prior to the statutory date for completion of the initial planning cycle;

- (3) to the extent such lands were reviewed in the RARE II final environmental statement and not designated as wilderness by the bill, such lands shall be managed for multiple-use purposes in accordance with section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974; and

- (4) unless expressly authorized by Congress, the Department shall not conduct any additional statewide roadless area review and evaluation of such lands for the purpose of determining the suitability of any additional areas for inclusion in the National Wilderness Preservation System.

ADMINISTRATION VIEWS

On November 15, 1983, Chairman Helms received a report from Secretary of Agriculture John R. Block expressing the Department's support for the enactment of S. 1610, the companion bill to H.R. 3578, if amended as suggested in the report. This report, along with the November 16, 1983, testimony to the Subcommittee on Soil and Water Conservation, Forestry, and Environment presented by Mr. J. Lamar Beasley, Deputy Chief for Programs and Legislation of the Forest Service, on S. 1610, follow:

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., November 15, 1983.

Hon. JESSE HELMS,
*Chairman, Committee on Agriculture, Nutrition, and Forestry, U.S.
Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: As you requested, here is our report on S. 1610, a bill "To establish the wilderness areas in Wisconsin."

The Department of Agriculture recommends that the bill be enacted with the amendments suggested herein.

S. 1610 would designate four new wildernesses totaling approximately 24,339 acres in the State of Wisconsin. All areas would become components of the National Wilderness Preservation System and be administered by the Secretary of Agriculture in accordance with the provisions of the Wilderness Act.

The four areas recommended for wilderness are roadless or undeveloped areas of National Forest System lands in Wisconsin that were included in the second Roadless Area Review and Evaluation (RARE II). We support wilderness designation for Porcupine Lake, Kimball Creek, Headwaters of the Pine, and Shelp Lake which were recommended for wilderness designation in the RARE II Final Environmental Statement. We recommend that the bill be amended to show the acreage for the four individual units are net acres of National Forest System land.

Section 3 of S. 1610 provides for the legal and factual sufficiency of the RARE II Final Environmental Statement and provides that areas reviewed in such Final Environmental Statement and not designated as wilderness by this Act shall be managed for multiple use purposes only until initial land management plans prepared under the National Forest Management Act of 1976 are revised. This language, if enacted, would perpetuate the current uncertainties over the land base that will be available over the long term for nonwilderness multiple-use activities. Local communities have a right to have some certainty over the land base which will be available to support economic activities upon which their future well-being depends. Under the language of the bill, if a change in physical conditions or litigation results in the need to revise a Forest Plan in only 2 years, the entire roadless area review issue would need to be reevaluated. This would be extremely disruptive and a waste of Forest Service time and manpower. These concepts are of such importance that no additions should be made to the Wilderness System without providing at the same time equally assured permanent status to National Forest System lands designated for multiple uses other than wilderness.

To assure permanent status to National Forest System lands designated for multiple uses other than wilderness, we recommend Sec. 3(b)(2), page 3, lines 23 through 25 and page 4, lines 1 and 2 be amended to read: ". . . the Department of Agriculture shall not be required to review again the suitability of such lands for wilderness designation."

We also recommend Sec. 3(b)(3) be amended to read: "No National Forest System lands in the State of Wisconsin except those lands designated as a part of the National Wilderness Preservation

System need be managed so as to protect the suitability of such lands for possible future wilderness designation."

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

JOHN R. BLOCK, *Secretary.*

STATEMENT OF J. LAMAR BEASLEY, DEPUTY CHIEF FOR PROGRAMS
AND LEGISLATION, FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. Chairman and Members of the Committee; I am pleased to have this opportunity to present the Administration's views on S. 1610 that would designate four new wildernesses in the State of Wisconsin totaling approximately 24,339 acres.

The proposed Porcupine Lake Wilderness, located on the Chequamegon National Forest, was inventoried in the second Roadless Area Review and Evaluation (RARE II) and recommended for wilderness designation.

The proposed Headwaters Wilderness is located on the Nicolet National Forest and contains three areas recommended for wilderness designation in RARE II. The areas are separated by two public roads. The boundaries for the areas have been delineated to exclude Forest Road 2182 and Forest Road 2414 so as to allow public use of the roads to continue. The southeast area is called "Headwaters of the Pine" and contains 8,872 acres. The "Shelp Lake Area" contains 3,705 acres and is located in the southwest corner of the proposed wilderness. The north area is called "Kimball Creek" and contains 7,527 acres.

We support designation of the areas recommended for wilderness in section 1 of S. 1610. We support also the bill's declaration that the RARE II Final Environmental Impact Statement for Wisconsin was legally sufficient and that adequate consideration had been given to the wilderness and nonwilderness values for all roadless areas in the State recommended in RARE II either for wilderness designation or for uses other than wilderness. This language is necessitated by the decision of the United States Court of Appeals for the Ninth Circuit in the State of California, et al., vs. Block, et al., handed down in October 1982.

As the Committee is aware, the Administration continues to recommend that the release language contained in section 3(b)(2) of the bill be strengthened to provide more long-term stability to the National Forest System lands not designated as wilderness by this bill or currently in the National Wilderness Preservation System.

Mr. Chairman, the Department of Agriculture recommends enactment of the bill if amended to provide long-term or permanent release for roadless areas which are to be managed for uses other than wilderness.

This concludes my prepared statement. I will be happy to answer any questions you may have.

COST ESTIMATE

I

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee estimates that the enactment of H.R. 3578, as reported, would result in a cost to the Federal Government of approximately \$150,000 over the 5 fiscal years beginning with 1985. In addition, receipts from the sale of timber could be reduced by up to \$100,000.

II

In accordance with the Congressional Budget Act of 1974, the Congressional Budget Office prepared the following cost estimate, which is consistent with the Committee's cost estimate:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., April 13, 1984.

Hon. JESSE A. HELMS,
Chairman, Committee on Agriculture, Nutrition and Forestry, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3578, the Wisconsin Wilderness Act of 1984, as ordered reported by the Senate Committee on Agriculture, Nutrition and Forestry, March 28, 1984.

The bill designates as wilderness 24,339 acres of national forest land in the state of Wisconsin. Based on information from the National Forest Service, we estimate that surveying and planning costs resulting from the wilderness designation will be approximately \$150,000 over the five fiscal years beginning with 1985.

In addition, gross timber receipts to the federal government could be reduced by up to \$100,000 per year. According to the provisions of the National Wilderness Preservation System Act, all timber in areas designated as units of the national wilderness preservation system is removed from the timber base of the national forest in which it is located. This decreases the annual potential yield of the forest. As a result, the Forest Service could reduce annual timber sale offerings by as much as 5 million board feet.

The federal government makes payments to state and local governments based on the amount of receipts collected from the sale of timber on national forests. These payments would be reduced slightly if federal timber receipts are lower.

Further details on this estimate are available from Debbie Goldberg (226-2860) of our Budget Analysis Division.

Sincerely,

ERIC A. HANUSHEK
(For Rudolph G. Penner).

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 3578. The bill would designate certain lands in the State of

Wisconsin as components of the National Wilderness Preservation System.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

Subject to valid existing rights, the Wilderness Act prohibits future harvesting of timber and future entry for mineral extraction on lands included in the National Wilderness Preservation System. Enactment of the bill will result in approximately 24,339 acres being placed in the National Wilderness Preservation System, and thereby, will restrict uses other than wilderness on such land.

Wilderness designation will result in restricting private individual's motorized use of public lands. Activities which have previously occurred, such as firewood gathering, motorized access for hunting and fishing, and trail bike riding, will be terminated.

A wilderness permit may be required of individuals using certain wilderness areas and, therefore, limited personal information would be collected in administering the program. It is anticipated that the impact on personal privacy would be minimal.

The bill will not result in any significant additional paperwork or recordkeeping requirements.







